

§ 6.4 Capital measures and capital category definitions.

(a) *Capital measures.* For purposes of section 38 and this part, the relevant capital measures shall be:

- (1) The total risk-based capital ratio;
- (2) The Tier 1 risk-based capital ratio;
- (3) The leverage ratio.

(b) *Capital categories.* For purposes of the provisions of section 38 and this part, a bank shall be deemed to be:

- (1) *Well capitalized* if the bank:
 - (i) Has a total risk-based capital ratio of 10.0 percent or greater; and
 - (ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and
 - (iii) Has a leverage ratio of 5.0 percent or greater; and
 - (iv) Is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.
- (2) *Adequately capitalized* if the bank:
 - (i) Has a total risk-based capital ratio of 8.0 percent or greater; and
 - (ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and
 - (iii) Has:
 - (A) A leverage ratio of 4.0 percent or greater; or
 - (B) A leverage ratio of 3.0 percent or greater if the bank is rated 1 in the most recent examination of the bank; and
 - (iv) Does not meet the definition of a well capitalized bank.
- (3) *Undercapitalized* if the bank:
 - (i) Has a total risk-based capital ratio that is less than 8.0 percent; or
 - (ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or
 - (iii) (A) Except as provided in paragraph (b)(3)(iii) (B) of this section, has a leverage ratio that is less than 4.0 percent; or
 - (B) If the bank is rated 1 in the most recent examination of the bank, has a leverage ratio that is less than 3.0 percent.
- (4) *Significantly undercapitalized* if the bank has:

- (i) A total risk-based capital ratio that is less than 6.0 percent; or

- (ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

- (iii) A leverage ratio that is less than 3.0 percent.

(5) *Critically undercapitalized* if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Capital categories for insured federal branches.* For purposes of the provisions of section 38 of the FDI Act and this part, an insured federal branch shall be deemed to be:

(1) *Well capitalized* if the insured federal branch:

- (i) Maintains the pledge of assets required under 12 CFR 346.19; and

- (ii) Maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

- (iii) Has not received written notification from:

- (A) The OCC to increase its capital equivalency deposit pursuant to § 28.6(a) of this chapter, or to comply with asset maintenance requirements pursuant to § 28.9 of this chapter; or

- (B) The FDIC to pledge additional assets pursuant to 12 CFR 346.19 or to maintain a higher ratio of eligible assets pursuant to 12 CFR 346.20.

(2) *Adequately Capitalized* if the insured federal branch:

- (i) Maintains the pledge of assets prescribed under 12 CFR 346.19; and

- (ii) Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

- (iii) Does not meet the definition of a well capitalized insured federal branch.

(3) *Undercapitalized* if the insured federal branch:

- (i) Fails to maintain the pledge of assets required under 12 CFR 346.19; or

- (ii) Fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) *Significantly undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 104

percent or more of the preceding quarter's average book value of the insured federal branch's third-party liabilities.

(5) *Critically undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 102 percent or more of the preceding quarter's average book value of the insured federal branch's third-party liabilities.

(d) *Reclassification based on supervisory criteria other than capital.* The OCC may reclassify a well capitalized bank as adequately capitalized and may require an adequately capitalized or an undercapitalized bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the OCC may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are hereinafter referred to generally as reclassifications) in the following circumstances:

(1) *Unsafe or unsound condition.* The OCC has determined, after notice and opportunity for hearing pursuant to subpart M of part 19 of this chapter, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The OCC has determined, after notice and opportunity for hearing pursuant to subpart M of part 19 of this chapter, that in the most recent examination of the bank, the bank received, and has not corrected a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

§ 6.5 Capital restoration plans.

(a) *Schedule for filing plan—(1) In general.* A bank shall file a written capital restoration plan with the OCC within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the OCC notifies the bank in writing that the plan is to be filed within a different period. An adequately capitalized bank that has been required pursuant to § 6.4 and subpart M of part 19 of this chapter to comply with supervisory actions as if the bank were undercapitalized is not required to submit a capital res-

toration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 6.4 and subpart M of part 19 of this chapter unless the OCC notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the OCC within 45 days of receiving such notice, unless the OCC notifies the bank in writing that the plan must be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the OCC instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A bank that is required to submit a capital restoration plan as the result of a reclassification of the bank, pursuant to § 6.4 and subpart M of part 19 of this chapter, shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of that Act by each company that controls the bank.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the OCC shall provide written notice to the bank of whether the plan has been approved. The OCC may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital restoration plan.* If a capital restoration plan is not approved by the OCC, the bank shall submit a revised capital restoration plan within the time specified by the OCC. Upon receiving notice that its capital restoration plan has not been